

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ROBERT KLEIN,

Plaintiff,

-against-

MEMORANDUM & ORDER
17-CV-4841 (JS) (AKT)

BROOKHAVEN HEALTH CARE FACILITY and
THE MCGUIRE GROUP,

Defendants.

-----X

APPEARANCES

For Plaintiff: Robert Klein, pro se
535 Brittany Road
PO Box 1512
Westcliffe, CO 81252

For Defendants: Erin S. Torcello, Esq.
Bond Schoeneck & King, PLLC
40 Fountain Plaza, Suite 600
Buffalo, NY 14202

SEYBERT, District Judge:

On March 11, 2019, Judge Tomlinson issued her Report and Recommendation (R&R, D.E. 22; Amendment, D.E. 24) recommending that the Court (1) deny Defendants' motion to dismiss as to Plaintiff's claims of age discrimination under the Age Discrimination in Employment Act of 1967 ("ADEA"), (2) grant Defendants' motion as to all other claims, and (3) grant Plaintiff leave to amend his Complaint as to (a) his ADEA retaliation claim and (b) his claim pursuant to Section 740 of the New York Labor Law ("NYLL"). On March 21, 2019, Plaintiff filed what he denotes an Amended Complaint (D.E. 26). He did not otherwise file

objections to the R&R and Defendants did not file objections to the R&R.

Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well reasoned, and free of clear error, and it ADOPTS the R&R (D.E. 22) in its entirety. Accordingly, (1) Defendants' motion to dismiss is DENIED as to Plaintiff's claims of age discrimination under the ADEA, and Plaintiff may proceed with those claims; (2) Defendants' motion to dismiss is GRANTED as to claims under Title VII of the Civil Rights Act of 1964; the New York State Human Rights Law; the New York City Human Rights Law; NYLL §§ 741, 195, 704, 876, 880; and New York Public Health Law Section 2803, as construed by the R&R, and those claims are DISMISSED WITH PREJUDICE; and (3) Defendants' motion is GRANTED with respect to Plaintiff's ADEA retaliation and NYLL § 740 claims, and those claims are DISMISSED WITHOUT PREJUDICE.

In accordance with this Order and the R&R, Plaintiff is granted leave to REPLEAD ONLY his ADEA retaliation claim and his NYLL § 740 claim. The Court has reviewed Plaintiff's March 21 submission, and notes that it does not reference his claims of ADEA age discrimination, which may proceed. The Court does not accept it for filing, and Defendants need not respond to it. Plaintiff is DIRECTED to file a new Amended Complaint on or before April 29, 2019 that includes his claims as to (1) ADEA age

discrimination, (2) ADEA retaliation, and (3) NYLL § 740, so that there is one operative pleading document going forward. The new Amended Complaint shall include only those claims and their supporting allegations. The new Amended Complaint will replace the original Complaint. Plaintiff is warned that his new Amended Complaint must comply with Federal Rule of Civil Procedure Rule 8, which requires "a short and plain statement of the claim[s] showing that the [Plaintiff] is entitled to relief" and that "[e]ach allegation [] be simple, concise, and direct." Plaintiff is further warned that his failure to file a new Amended Complaint on or before April 29, 2019 will result in a dismissal of this case.

Defendants are directed to promptly mail a copy of this Order to the pro se Plaintiff and file proof of service on ECF.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 31, 2019
Central Islip, New York